

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES
800 K STREET, N.W., SUITE 400N
WASHINGTON, D.C. 20001-8001**

Date: February 12, 1997

Case No.: 92-ERA-14

In the Matter of:

JAMES B. DeBOSE,
Complainant,

v.

NORTH CAROLINA POWER AND LIGHT CO.,
Respondent.

**RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT AND DISMISSING COMPLAINT**

This proceeding arises under the employee protection provision, section 211, of the Energy Reorganization Act of 1974, 42 U.S.C. § 5851, as implemented by the regulations at 29 C.F.R. Part 24. Complainant filed a complaint with the U.S. Department of Labor alleging illegal discriminatory conduct toward him by Respondent due to his alleged protected activities under the Act.

The parties originally entered into and submitted a settlement agreement on February 25, 1992. However, the Secretary of Labor declined to approve the agreement due to the confidentiality provisions and remanded the matter to this Office. *Order of Remand*, Feb. 7, 1994. After the U.S. Court of Appeals for the Fourth Circuit dismissed Respondent's appeal for lack of jurisdiction, the record was referred to this Office and assigned to the undersigned. Subsequent to the appointment of Administrative Law Judge Robert L. Hillyard as settlement judge, the parties have executed and submitted a settlement agreement for approval.

The settlement agreement provides that the parties will respect the confidentiality of its terms and that the agreement is submitted pursuant to 29 C.F.R. § 70.26 with a request to have it treated as confidential commercial information, requiring notice to the submitters before disclosure and/or exempting it from disclosure, under the Freedom of Information Act. Pursuant to my Order to Provide Additional Information on January 10, 1997, the parties have further certified that, other than the submitted Settlement Agreement, there are no other agreements between the parties with respect to the complaint giving rise to this claim. The parties have also provided the breakdown of the settlement amount between the amount to go directly to Complainant and the amount to go to his

attorneys. The parties have requested that this information also be treated as confidential commercial information under 29 C.F.R. § 70.26.

Review of the settlement agreement is limited to a determination of whether its terms are a fair, adequate, and reasonable settlement of Complainant's complaints concerning the violations of the whistleblower protection provisions of the Energy Reorganization Act. *See Fuchko and Yanker v. Georgia Power Co.*, 89-ERA-9 and -10 (Sec'y March 23, 1989). The basic criteria is whether the settlement agreement adequately protects the whistleblower and whether the settlement is contrary to the public interest. After consideration of the settlement agreement and the representation of the parties, the agreement appears to be fair, adequate, and reasonable, and it appears to be in the public interest to adopt the agreement as the basis for the administrative disposition of this matter.

Accordingly, IT IS HEREBY RECOMMENDED that the settlement agreement between Complainant, James B. DeBose, and Respondent, Carolina Power and Light Company, be approved and that the matter be dismissed with prejudice. IT IS FURTHER RECOMMENDED that the settlement agreement be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.

JOHN M. VITTON
Chief Administrative Law Judge

JMV/cy

PREDISCLOSURE NOTIFICATION MATERIALS

NOTICE: This file contains materials that the submitters have designated as confidential commercial information. Before any information in this file is disclosed pursuant to a Freedom of Information Act request, the Department of Labor is required to notify the submitters to permit them to file any objections to disclosure. *See* 20 C.F.R. § 70.26 (1996).

Date: February 11, 1997

Case No.: 92-ERA-14

Description of document: Settlement Agreement